IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5115 OF 2004

Gulab R. Potale ....Petitioner
V/s.
Waman P.Mohite & Ors. ....Respondents

Mr.S.P. Thorat for the Petitioner.
Mr.P.S. Dani for Respondent No.1.

CORAM : R.M. SAVANT, J.
DATED : 21ST MARCH, 2007.

P.C. :

1. Rule. By consent Rule made returnable forthwith and heard.

2. The Petition impugns the order dated 31.3.2004 passed by the learned Joint Civil Judge, Junior Division, Khed on Exhibit-53, filed by the Petitioner for amending the plaint. By the said order, the said application Exhibit-53 came to be rejected.

3. Such of the facts which are necessary to be cited are stated thus :-

4. The Petitioner is the original Plaintiff in

R.C.S. No.107 of 1999. The said suit was filed for permanent injunction against the Respondents. The land in question is Gat No.2289 admeasuring 7.89-R, there is a road on the bandh which goes to the eastern side which is about 20 ft. It is the case of the Petitioner in the said suit that the said road is being used for the purpose of taking the bullock-carts, trucks and tractors to the field of the Petitioner. The Petitioner has filed the said suit basing the claim on ownership.

5. The Petitioner moved an application for amending the plaint so as to delete the word "ownership right" but claiming "easementary right" in respect of the said road. The said application of the Petitioner came to be rejected by the trial Court on the ground that a new case was sought to be made out by the Petitioner-Plaintiff.

6. I have perused the impugned order passed by the trial Court. I am of the view that the said reasoning of the trial Court is not in cosonance with them principles governing amendments. If the amendment is allowed, the Petitioner has still to prove his case before the trial Court. In fact in the original plaint, the Petitioner was claiming ownership

right in respect of the road in question which by way of the amendment he wants to change to an easementary right. In view thereof no prejudice would be caused to the Respondents if such an amendment is allowed.

7. In that view of the matter, the impugned order dated 31.3.2004 is set-aside. The amendment application Exhibit-53 filed by the Petitioner is allowed. The Respondents are at liberty to file an additional written statement to the amendments, which would be incorporated in the plaint. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

(R.M. SAVANT, J.)